

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4383 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No
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ASHOKKUMAR KANCHANLAL RANA

Versus

EXECUTIVE ENGINEER

Appearance:

MR GM JOSHI for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 13/10/2000

C.A.V. JUDGEMENT

1. The petitioner-workman has by way of this petition challenged the award of the Labour Court, Nadiad in Reference (LCN) No.898 of 1983 whereby the reference and his demand were rejected.

2. It was the case of the petitioner that he had worked under the respondent since 1976 and had continuously worked for 240 days in the year preceding the date of his termination, i.e. 20.1.1981. The respondent failed to file even a reply to the statement of claim of the petitioner before the Labour Court and the case proceeded ex parte. On the basis of the documentary evidence, the petitioner proved that he had worked for more than 240 days in the year preceding the date of his termination. It appears from the impugned award that the petitioner had also deposed that he was getting random labour work at the rate of 50%. The reference and the claim of the petitioner were rejected only on the ground that the petitioner was a daily-wager and not a permanent workman. Thus, the Labour Court failed to consider violation of Section 25-F of the Industrial Disputes Act, 1947 in the matter of termination of service of the petitioner, and only on the surmise that the petitioner might have been dismissed because he had demanded wages as per the Minimum Wages Act, it was held that he had no right to be reinstated. The learned counsel appearing for the respondent failed to show as to how the mandatory provisions of the I.D. Act as also the conditions precedent to a valid retrenchment were complied. In such circumstances, the impugned award is evidently illegal and the Labour Court has failed to exercise the jurisdiction vested in it. Therefore, the petitioner is required to be reinstated by the respondent. As far as payment of backwages is concerned, as noted earlier, the petitioner has conceded that he was getting labour work and was not wholly unemployed. A period of about 19 years has elapsed since the petitioner was discharged from service as above. As observed by the Supreme Court in *MANAGEMENT OF M.C.D. v. PREM CHAND GUPTA* [AIR 2000 SC 454], where for no fault of the contesting parties the litigation has lingered on for decades, to saddle a party with full backwages for the entire period would be too harsh while the workman could not have remained totally unemployed for all the years. On the same analogy, and in the facts and circumstances of this case, the grant of 50% of backwages from the date of reference would meet the ends of justice.

3. Accordingly, the petition is allowed and the respondent is directed to reinstate the petitioner on his original post with 50% backwages to be counted on the basis of the minimum rate of wages applicable to the petitioner. Rule is made absolute with no order as to costs.

(D.H.Waghela, J.)

KMG Thilake

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